Municipal Council, Pratapgarh vs. The State of Rajasthan & ors.

SB Civil Writ. Petition No.6295/1992

Date of Order: 15th November, 2006.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr. M.S.Singhvi for the petitioner/s.
Mr.O.P.Boob , Dy.G.A.

In the case in hand, the Municipal Board has submitted that the Forest Officers had encroached upon a land belonging to the Municipal Board . In this regard the Municipal Board had written to the Collector and the Collector in turn directed the Municipal Board, vide Annx.5, that the encroachment can be removed by the Municipal Board. In this regard a letter was also written by the District Administration to the Dy. Conservator of Forest , Pratapgarh to remove the encroachment. Ultimately the encroachments were removed. The action of the Municipal Board were challenged by the Dy. Conservator of Forest, before the SDO resolving under section 285 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as 'the Act of 1959').

The learned counsel for the petitioner submitted that exercise of the powers under Section 285 of the Act of 1959s pre-supposes that any act done or is being done on behalf of the Board is if causing any injury or annoyance to the public or is causing breach of peace or is unlawful, then he may suspend the execution of such an order.

In the instant case the Board had already executed its resolve and had taken possession . For concluded action, any action under Section 285 of the Act of 1959 is not contemplated.

Heard learned counsel for the parties and perused the record.

Once the Collector itself, who is the representative of the State, has concluded that the Forest Department is in unauthorised occupation of the land then the stand of the Forest Department cannot be of any consequence. In any case, the order of SDO , exercising powers under Section 285 of the Act of 1959 are not called for because the Municipal Board was acting under the instructions of the Collector who is a higher authority and also Section 285 are powers of the State Government which, on delegation, has been exercised by the SDO in a manner that cannot be countenanced and in that view of the matter the writ petition is

allowed and the order of the SDO dated 10.02.92 is set aside.

(BHAGWATI PRASAD), J.

L.George